

FINDING OF EMERGENCY

The Department of Motor Vehicles finds that the adoption of Sections 225.00, 225.06, 225.12, 225.15, 225.21, 225.24, 225.27, 225.30, 225.33, 225.39, 225.48, 225.57, 225.60, 225.66, and 225.69, and the adoption of amended Sections 225.03, 225.09, 225.18, 225.36, 225.42, 225.45, 225.51, 225.54, 225.63 and 225.72 in Title 13, Division 1, Chapter 1, Article 3.6, California Code of Regulations, are necessary for the immediate preservation of the public peace, health and safety, or general welfare.

FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

The department finds that the emergency adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety or general welfare pursuant to Government Code Section 11346.1(b).

- Unless the department can immediately establish safeguards in the agreements between the department and private industry partners, the privacy and protection of individual information will not be guaranteed, and security of the department's vehicle registration database and its product inventory may be jeopardized.
- The department must immediately have authority to require qualified business partners to provide full disclosure regarding employees and owners, or the department and its customers may be subject to fraudulent activity by employees of its business partners.
- Once a transaction has been completed, the department must have a means of identifying transactions submitted by a private industry partner. It is critical for the department to be able to monitor and audit its business partners and to identify inaccurate or fraudulent work.
- Vehicle Code section 1685 authorizes the director to establish a fee for filing an application for participation in the BPA program. The fee is required in order to recoup the costs of doing business with qualified private industry partners.

After adopting the original emergency regulations that were approved by the Office of Administrative Law on July 5, 2002, both the business partners and the department determined that the regulations did not meet the goals of the Business Partner Automation Program. Meetings with business partners provided acceptable alternative solutions to the existing emergency regulations while still meeting the department's security requirements and allowing for the efficient processing of transactions. The readopted emergency regulations were approved by the Office of Administrative Law on November 4, 2002.

The emergency regulations will expire by operation of law on March 5, 2003. Notice of written comment period on the proposed action to make the emergency regulations permanent was published on December 27, 2002, but the permanent regulations are not expected to be adopted and submitted to OAL before the expiration of the emergency regulations. Failure to have regulations in place would create ambiguity

in running the program, for both the department and the business partners. The amended emergency regulations will minimize financial risk to the department, will specify time frames for notifying the department when BPA employees are terminated for various causes, and will identify additional form revisions.

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Since the terrorist attacks of September 11, 2001, the department has reviewed its policies and reevaluated the alternatives to insure security and integrity of the information held by the department. In 2002, the State Controller's Office employee database and the Department's servers were invaded by a hostile element.

Increased concern over fraud and identity theft requires the department to tighten the security process to insure oversight procedures for the processing of vehicle titling and registration transactions. To maintain the integrity of the department's registration database by ensuring that these documents are legally issued to the appropriate persons has been recognized as a high priority. Therefore, it is necessary to establish the immediate authority to implement safeguards in the agreements between the department and private industry partners.

These safeguards will continue to include compliance with information security guidelines, annual audits, financial security requirements, fingerprinting and background checks on employees with direct contact with customers and those who oversee the business partner operations, and our audit plan and procedures. Therefore, emergency adoption of the proposed regulations, as amended, is necessary.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code Sections 1651 and 1685 in order to implement, interpret or make specific Vehicle Code Section 1685.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code Section 1685 authorizes the department to establish contracts in conformance with the provisions of the Government Code governing personal services contracts, for electronic programs to join the department with qualified private industry partners, to provide services that include processing and payment programs for vehicle registration and titling transactions. Section 1685 defines the three types of private industry partnerships authorized under this section. Section 1685 specifies provisions that the contractual agreements must include, and authorizes the department to establish additional requirements through regulations for the safeguarding of privacy and information protection. Section 1685 permits the department to establish through regulations the maximum amount that a qualified private industry partner may charge its customers in providing the services authorized under the section.

The department proposes to adopt Sections 225.00, 225.06, 225.12, 225.15, 225.21, 225.24, 225.27, 225.30, 225.33, 225.39, 225.48, 225.57, 225.60, 225.66, and 225.69,

and amend Sections 225.03, 225.09, 225.18, 225.36, 225.42, 225.45, 225.51, 225.54, 225.63, and 225.72 to establish the contents of agreements between the State of California, Department of Motor Vehicles, and business partners and provisions for participation in the Business Partnership Automation (BPA) Program. The business partner will be authorized to electronically transmit vehicle registration and vehicle ownership data from an authorized site, through a public network, to the department's vehicle registration and BPA inventory databases. The agreements provide standards for the electronic transfer of funds for payment of fees by the business partner to the department. The agreements also require the business partner to track and monitor the assignment and issuance of license plates and year of expiration stickers, and to monitor the printing and self-issue of registration documents. The reporting of vehicle registration information will apply only to those transactions authorized within each agreement.

§225.00. Definitions. Section 225.00 will provide definitions and specify applicability of the definitions to the regulations in Article 3.6.

§225.03. Application Requirements. Section 225.03 will establish application requirements for a BPA permit.

§225.06. Fingerprints. Section 225.06 will establish fingerprint requirements for all business partner owners and employees, for the purpose of criminal background checks.

§225.09. Financial Security Requirements. Section 225.09 will establish requirements for a surety bond or an irrevocable letter of credit that must be procured by each business partner.

§225.12. Business Partner Contract. Section 225.12 will establish provisions for the contract.

§225.15. BPA Permit Authority. Section 225.15 will establish permit authority for qualified business partners.

§225.18. Cause for Refusal to Enter into a Contract and Issue a Permit. Section 225.18 will establish criteria for business partner owners and employees actions that would cause the refusal to issue a permit.

§225.21. Review of Criminal History Information. Section 225.21 will establish criteria for the review of fingerprints and criminal background checks.

§225.24. Failure to Meet Security Requirements. Section 225.24 will establish consequences for failure to meet security requirements.

§225.27. Transaction Access. Section 225.27 will establish provisions for electronic interface between the types of business partners and the department and payment for the transactions fees collected by each type of business partner.

§225.30. Electronic Fund Transfer. Section 225.30 will establish the provisions for the EFT contract.

§225.33. Use and Retention of Information. Section 225.33 will establish requirements for business partners' use and retention of information processed in the BPA program.

§225.36. Change of First-Line Service Provider. Section 225.36 will establish requirements for reporting to the department any change in the relationship between a first-line service provider and a second-line business partner.

§225.39. Business Partner Responsibilities. Section 225.39 will establish the responsibilities of the various types of business partners.

§225.42. Business Partner Changes. Section 225.42 will establish requirements for reporting changes to the department, including changes in the legal or ownership structure of the business partner.

§225.45. Customer Fees. Section 225.45 will establish a limit on fees the business partner can charge its customers per transaction.

§225.48. Transaction Fee. [Reserved for future use.]

§225.51. Information Security Requirements. Section 225.51 identifies the guidebook to establish requirements for protection of the department's information technology assets and data.

§225.54. Transaction Procedures and Inventory Requirements. Section 225.54 identified the handbook to establish requirements for the processing of registration transactions and inventory.

§225.57. Inventory. Section 225.57 is reserved for future use.

§225.60. Retention of Business Records. Section 225.60 will establish provisions for the retention of records by the business partners and requirements concerning the availability of those records for departmental review.

§225.63. Audit Requirements. Section 225.63 will contain provisions for periodic compliance audits of business partners.

§225.66. Investigation and Review. Section 225.66 will contain provisions for review of a business partner's program, and authorize the department to recover costs for oversight of the program.

§225.69. Cancellation or Termination of a BPA Contract and Permit. Section 225.69 will provide procedures for voluntary cancellation of a BPA permit and contract.

§225.72. Voluntary Closing. Section 225.72 will establish requirements for voluntarily closing a permit site.

DOCUMENTS INCORPORATED BY REFERENCE

- Business Partner Automation Application, First Line Business Partner, REG 4024 (NEW 7/2002)
- Business Partner Automation Application First-Line Service Provider, REG 4023 (NEW 7/2002)
- Business Partner Automation Application, Second-Line Business Partner, REG 4025 (NEW 3/2002)
- Statement of Personal History, REG 4019 (Rev. 11/2002)
- Information Security and Disclosure Statement (Firm), EXEC 201X (Rev. 2/96)
- Business Partner Automation Surety Bond, REG 866 (Rev. 12/2002)
- Business Partner Automation Program Service Provider Change, REG 4022 (Rev. 11/2002)
- Business Partner Automation Program Application for Changes, REG 4026 (Rev. 11/2002)
- Business Partner Automation Disclaimer, REG 4020 (Rev. 11/2002)
- IT Security Guidelines for Use in BPA Program (October 2002)
- Business Partner Automation Program Transaction Procedures and Inventory Requirements Handbook, (December 6, 2002)
- Accountable Items(s) Order, ADM 510 (NEW 3/93)
- Physical Inventory (Non-DMV Entities), ADM 175A (Rev. 2/2000)
- Business Partner Automation Program Audit Self Certification, REG 4016 (NEW 12/2002)
- Representative Non-Disclosure Statement, REG 4028 (NEW 3/2002)

It would be impractical, cumbersome, or unduly expensive to publish these documents in the California Code of Regulations. The documents are currently available to the public upon request from the department's BPA Program Administrator.

BUSINESS REPORTING REQUIREMENT

The regulations contain a requirement for one or more reports that is applicable to businesses. The department finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

FISCAL IMPACT STATEMENT

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: There are start-up and maintenance costs with any business, especially one that requires electronic interfacing. Many of these costs are costs that would normally be associated with a small or typical business.

With the statute requiring a fee, the regulations establish a non-refundable application fee of \$324 for the principal place of business that must be paid every three years. An additional fee of \$130 is due for each site location maintained by the business partner that is added during the initial application process. A \$175 fee to add a site after the application is approved is established in the regulations.

The background checks for business partner owners and employees that have direct contact with customers and those that oversee the operations of the business partner require each owner and employee to be fingerprinted and complete and sign an amended four-page Statement of Personal History form for the department to review. The Statement of Personal History form has been modified to exclude superfluous information. A fee is required when the owner and/or employee is being fingerprinted. The fee pays the cost of the FBI (\$24) and DOJ (\$32) background computer checks. To provide a reasonable level of security, business partners are required to exclude employees until an approval letter is received from the department. A list of approved employees is required to be maintained and available for audit. The estimated cost to comply is \$500 a year.

The regulations will require an acceptable method of financial security with a monetary amount above the surety bond required in statute. This is necessary to provide additional coverage for a broad spectrum of information security risk factors that are greater than that stated in statute. The monetary amount of the first-line service provider's bond has been increased because of the high risk of catastrophic financial loss to the department caused by the bankruptcy of a business partner. Because the first-line service provider pays the department for the transactions of one hundred or more second-line business partners, the

daily amount due to the department may exceed a million dollars. Although the present first-line service providers appear to have the financial resources to meet this obligation, a higher bond amount will provide the department with an additional source from which fees due to the department may be recovered that were not available in the aftermath of a recent auto club bankruptcy.

The regulations allow either a surety bond or an irrevocable letter of credit issued by a bank. This modification will not increase operational costs. As each business partner would be acting in place of the department, an insurance policy to protect the department against normal liability and damages that may occur during the operation of BPA business is required in the sum of one million dollars. Cost to purchase the insurance varies based on the business partner's credit rating and length of time as a customer with the insurance seller. Estimated cost to comply is between \$500 and \$2,000.

The shipping costs to send inventory vary based on the volume and type of transactions processed, and distance shipped. The estimated annual cost to ship 50 pounds a month from Sacramento to Southern California (location of the majority of second line business partners) for one year is \$504.

Equipment costs vary depending on whether the business plans to add additional staff or to use existing staff, and if the business already owned computer equipment that could be modified. The department's Information Technology staff recommends a list of 5 printers available from local retailers to print the registration cards. The estimated cost is \$2,500.

Monitoring and retaining reports and records will require additional or redirected staff resources. Most of the reports will be calculated, maintained and available electronically to the department and the business partner. A security review of the reports and records, adding and deleting of personnel on the employee list, and space to keep the records available for audit are estimated to cost \$2,000 a year.

To comply with the mandatory requirements established in the statute that require the department to safeguard privacy and protect the information released and the confidential records in the department's databases, the first-line business partner and first-line service provider will be required to obtain annual compliance audits conducted by an independent auditor. The second-line business partners may self certify. The first-line service provider's audit will included a random sampling of the second-line transactions and the department's audit section will also randomly audit transactions on a regular basis. The cost of the department's random sampling is included in the increased cost of the application. The independent auditor will provide a written report to the business partner and the department with the source documents sent to the department to review. Based on the estimated time for the department to complete a compliance audit and write the findings report, the independent auditor is estimated to cost \$2,500 at a standard fee of \$250 an hour.

There is a potential of an additional examination, audit or investigation when the department determines that the business partner has failed to provide adequate security controls and privacy measures for the department's records, proprietary assets or inventory. All reasonable costs to reimburse the department for expenses are the responsibility of the business partner. A first-line service provider is responsible for the audit of the second-line business partner when the second-line business partner does not pay within thirty days from the billing date.

Collection costs of billing fees were not included in the costing as only 4 out of the 219 business partners have these costs. Arrangements for payment of fees is between the first line service provider and the second line business partner, as the first line service provider pays the department daily for all activity through their interface connection.

The majority of the cost to the business partner will come from software fees and charges for an electronic interface provided through a secure public network system. Information provided on a survey completed in November 2001, indicated that the vast majority of business partners paid up to five dollars (\$5) per transaction to process the department's transactions. Based on a projected amount of varied vehicle registration processing the business partner completes in a month for a small business and a typical business the following applies: a small business that processes 500 transactions per month times 12 months would incur \$30,000 in electronic processing costs, and a typical business that processes 50,000 transactions per month times 12 months would incur \$3,000,000 in electronic processing costs.

These costs are offset by the fact that business partners charge a fee for their service.

- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action has no effect that would have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action proposed by the department will authorize the department to establish agreements between the department and qualified business partners which allow the business partner to electronically transmit vehicle registration and vehicle ownership data from an authorized site, through a public network, to the department's vehicle registration and BPA inventory databases. On November 2, 2001, the department conducted a survey seeking limited information from existing business partners on current business costs, including overhead and transaction costs charged to customers.

- The adoption of this regulation will not create or eliminate jobs or businesses in the state of California, nor will it result in the elimination of existing businesses, or reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will affect small businesses. The November 2, 2001, survey indicates that approximately 16% of the department's existing business partners are small businesses under Government Code section 11342.610.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567; or cpatrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, (916) 657-5690, or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.